

REMARKS/ARGUMENTS

Claims 13-18, 21-32 and 40 are active. Claims 19 and 20 have been cancelled and claims 1-12 and 33-39 have been withdrawn from consideration. Claim 40 has been allowed. Independent claim 13 has been revised to include structural limitations. The dependent claims have been amended consistently with claim 13. Page 19 of the specification has been amended to include the address of the CNCM depository. The Abstract has been replaced by the attached Abstract which refers to the subject matter presently claimed in this application. No new matter has been introduced. Favorable consideration of this amendment and allowance of this application are respectfully requested.

The Applicants thank Examiner Joike for the courteous and helpful interview of October 6, 2009. It was suggested that the Applicants introduce structural limitations into claim 13 to help avoid the issues under 35 U.S.C. 112, first paragraph. Such limitations might include use of a percent identity such as 90% or 95% and/or definition of conserved amino acid residues such as those disclosed on page 8 of the specification. Amendments to avoid the anticipation rejection, such as exclusion of SEQ ID NO: 2 from the claims were discussed.

Restriction/Election

The Applicants previously elected with traverse **Group II**, claims 13-32 and 40, directed to DTP protein, nucleic acid, vectors and host cells. The requirement has been made FINAL. The Applicants respectfully request that the claims of the nonelected group(s) or other withdrawn subject matter which depend from or otherwise include all the limitations of an allowed elected claim, be rejoined upon an indication of allowability for the elected claim, see MPEP 821.04.

English Translation of this Application

A certified English translation of PCT/FR05/000743 has been requested, but has already been provided, see section 6 of the Transmittal Letter for the §371 filing. Therefore, the U.S. Patent Office already has a copy of the original application, which is not considered a foreign priority document (that is, the PCT is the same application as the national-stage filing, nor a priority document). The Applicants have already met the requirements of a filing a national-stage application, see 35 U.S.C. §371(c)(2). Accordingly, this requirement may be withdrawn.

Objection—Abstract

This objection is moot in view of the attached revised Abstract.

Rejection—35 U.S.C. §112, first paragraph

Claims 15, 16 and 18-26 were rejected under 35 U.S.C. 112, first paragraph, as lacking adequate written description. The claims have been revised to include additional structural limitations, i.e., 90% or 95% identity, the conserved residues at Y13, D77, D97, E103, and M312 of SEQ ID NO: 2 and threonine at a position corresponding to position 15 of SEQ ID NO: 2. These structures are each clearly disclosed at least on pages 7 and 8 of the specification. Moreover, while exemplification of a representative number of species is one way to descriptively support a genus, it is not the only way. Here, the Applicants have provided express structural description of the claimed genus using % identity as well as conserved amino acid residues. Accordingly, one of skill in the art as of the filing date of this

application would have recognized that the Applicants were in possession of the subject matter of claim 13. Therefore, this rejection cannot be sustained.

Rejection—35 U.S.C. §112, second paragraph

Claims 13-32 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. This rejection is moot in view of the amendments above.

Rejection—35 U.S.C. §102/103(a)

Claims 13-16 and 28-32 were rejected under 35 U.S.C. §102(b) as being anticipated by Kaminski, et al., WO03/025163. This rejection is moot in view of the exclusion of SEQ ID NO: 2 from the present claims.

Allowable Subject Matter

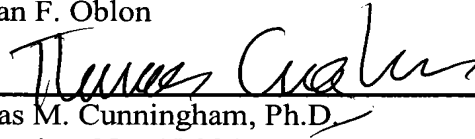
The Applicants thank Examiner Joiike for identifying allowable subject matter in claim 40,.

Conclusion

In view of the amendments and remarks above, the Applicants respectfully submit that this application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Thomas M. Cunningham", is written over a horizontal line.

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